

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

CARLOS MATHEU
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-161
Case No. 73-6505

S.S.A. No.

GENERAL FOODS CORPORATION
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. LA-1274 which held the claimant was "unemployed" under section 1252 of the Unemployment Insurance Code. We have considered the written argument which has been received.

STATEMENT OF FACTS

The claimant began employment with the employer on April 29, 1971 as a production worker at a wage of \$3.70 an hour. Production operations at the plant where the claimant was employed were shut down and he did not work for the previously announced four-week period from Monday, July 2, 1973, at 8 a.m. until Monday, July 30, 1973, at 8 a.m. Maintenance workers were assigned work during this period. The claimant returned to work at the plant following this period.

Effective July 1, 1973, the claimant filed a new claim for unemployment insurance benefits with the Department. The Department notified the employer of the claim, in reply to which the employer reported it had paid the claimant \$353.76 for vacation pay for the period from July 2, 1973 through July 15, 1973. The Department determined that the vacation pay was not wages so that the claimant was "unemployed" and not ineligible for unemployment benefits under section 1252 of the code.

The employer appealed to a referee who affirmed the determination in the decision presently before us in this appeal.

At the hearing before the referee, representatives of the employer testified that all vacation schedules and pay for the calendar year 1973 were made under the provisions of a working agreement effective April 27, 1970 to and including April 26, 1973 between the employer and the labor unions which represented the employees at the plant where the claimant worked. A new working agreement effective from April 27, 1973 through April 26, 1976 contained substantially similar provisions with respect to vacations.

Depending upon their length of continuous service, employees under both agreements could be entitled to vacations with pay of from one week to four weeks. Vacations would be granted by the employer during the calendar year after due consideration to efficient operation of the business and the employees' personal desires and seniority, with certain restrictions on the number of production employees assured of vacations in any one workweek. The agreements provided that in the event "a summer shutdown becomes necessary" the employer could require that all production workers take at least two weeks of their vacation at that time (1970-1973 agreement), or three weeks, two weeks, or one week of vacation provided the shutdown was for those periods of time respectively (1973-1976 agreement).

Employees scheduled to take vacation while laid off for the plant shutdown could make arrangements with the employer to take a vacation at some other time. However, both the Administrative Services Manager and the Pectin Processing Manager for the employer testified they did not recall any employee making such an arrangement with the employer. Neither the claimant nor the Department appeared at the hearing and there is no evidence in the record before us that the claimant had scheduled a vacation for some period other than during the plant shutdown in July 1973.

During the designated vacation and layoff period, the employer maintained contributions or otherwise continued in effect medical, disability, life insurance and retirement and investment plans, and seniority for the employees off work.

The question before us is whether the claimant was ineligible for unemployment benefits under the Unemployment Insurance Code because of his receipt of vacation pay for a period during which he was laid off due to a regularly scheduled shutdown of production operations at the plant where he was employed.

REASONS FOR DECISION

Section 1251 of the Unemployment Insurance Code provides as follows:

"Unemployment compensation benefits are payable from the Unemployment Fund to unemployed individuals who are eligible under this part."

Section 1252 of the code defines an "unemployed" individual as follows:

"An individual is 'unemployed' in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. . . ."

Prior to March 4, 1972, the general rule was well established in this state that an individual was not "unemployed" within the meaning of section 1252 of the code if upon layoff or termination of employment he received vacation pay in excess of his weekly benefit amount (Jones v. California Employment Stabilization Commission (1953), 120 Cal. App. 2d 770, 262 P. 2d 91; Shand v. California Employment Stabilization Commission (1954), 124 Cal. App. 2d 54, 268 P. 2d 193; Appeals Board Decisions Nos. P-B-4, P-B-36, P-B-40 and P-B-52).

With respect to vacation payments made on and after March 4, 1972, the California Legislature added section 1265.5 to the Unemployment Insurance Code (Stats. 1971, c. 1272, p. 2492, § 1) as follows:

"Notwithstanding any other provision of this division, payments to an individual for vacation pay which was earned but not paid for

services performed prior to termination of employment, or commencement of unemployment caused by disability, as the case may be, shall not be construed to be wages or compensation for personal services under this division and benefits payable under this division shall not be denied or reduced because of the receipt of such payment."
(Emphasis added)

Subsequently, the California Legislature amended section 1265.5 of the code (Stats. 1972, c. 864, p. 1533, § 6, urgency, eff. August 14, 1972) as follows:

"Notwithstanding any other provision of this division, payments to an individual for vacation pay, sick pay, or holiday pay which was earned but not paid for services performed prior to termination of employment, shall not be construed to be wages or compensation for personal services under this division and benefits payable under this division shall not be denied or reduced because of the receipt of such payment." (Emphasis added)

The operative effect of this amendment was set forth in section 7 of Statutes 1972, c. 864, p. 1537, as follows:

"The provisions of Section 1265.5 of the Unemployment Insurance Code as amended by this act shall be operative only with respect to payments of vacation pay, sick pay and holiday pay made on or after January 1, 1973. The provisions of Section 1265.5 of the Unemployment Insurance Code as in effect prior to the amendments made by this act shall remain applicable to payments of vacation pay made prior to January 1, 1973."

The vacation payment in this case was made after the operative date of section 1265.5 of the code, as amended. Therefore, whether the vacation payment may or may not be considered wages depends upon whether there was or was not a "termination of employment" within the meaning of the code section.

Since the claimant was not performing services for his employer beginning July 2 until July 30, 1973, the claimant's entitlement to file a valid claim for unemployment insurance benefits for this period may not be questioned merely because of his receipt of what might be wages under section 1252 of the code (on "valid claim" see section 1276 of the code) or because the employment relationship may not have ended (Douglas Aircraft Company v. California Unemployment Insurance Appeals Board (1960), 180 Cal. App. 2d 636, 4 Cal. Rptr. 723). However, even though entitled to file a valid claim for unemployment insurance benefits, the claimant's eligibility for such benefits when he has received vacation pay requires a resolution of the question of whether the layoff terminated the employment relationship.

In our prior decisions we have recognized that the legal question of whether an employment relationship is terminated or suspended may be extremely close or difficult to resolve (Appeals Board Decisions Nos. P-B-11, P-R-29, P-B-44, P-B-63, P-B-65, P-B-95, P-R-107, P-B-116, P-B-131, P-B-133, P-B-145 and P-B-155).

In the present case, unlike the situations in Appeals Board Decisions Nos. P-R-29, P-B-34, P-B-75, P-B-92 and P-R-107, the claimant was not laid off for an indefinite period, but he was laid off for a definite period. His layoff was in accordance with an employer-union working agreement under which vacations with pay could be scheduled during the layoff period. In addition, although the claimant's vacation pay was for only the first two weeks, the employer maintained contributions or otherwise continued in effect various medical, life insurance and retirement plans, and seniority for the employees off work for the entire period. Upon these facts we conclude that there was no "termination of employment" within the meaning of section 1265.5 of the code. Therefore, the payment made to the claimant constituted wages under the Unemployment Insurance Code.

We further hold that the wages were payable with respect to the weeks to which they were allocated by the employer under the employer-union working agreement so that the claimant was ineligible for benefits under section 1252 of the code as not "unemployed" during the two-week period beginning July 1, 1973. While we have recognized that vacation payments should be allocated to the extent possible to the period when a vacation is actually taken (Benefit Decisions Nos. 5595, 6263 and 6756; Disability Decisions Nos. 532 and 613) and under

the working agreement the employer could grant a vacation to be taken at some other time, there is no evidence to show that such an arrangement had been made in the present case; on the contrary, representatives of the employer testified they did not recall the employer making such an arrangement with any employees.

DECISION

The decision of the referee is reversed. The claimant was not "unemployed" under section 1252 of the code for the two-week period beginning July 1, 1973.

Sacramento, California, March 12, 1974

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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